SEGASERVICES SDN. BHD.

v.

ROXY ELECTRIC INDUSTRIES (M) SDN. BHD.

HIGH COURT MALAYA, KUALA LUMPUR
WAN ADNAN J
[CIVIL SUIT NO. D5-22-660-90]
27 APRIL 1991

COMPANY LAW: *Share register - Requirement to maintain one share register - Appointment of share registrar - Meaning of "some other person" - Companies Act 1965, ss. 158, 159(1)(b) - Interpretation Acts 1948, 1967, s. 4(3).*

CONTRACT: *Appointment as Share Registrars - Whether fixed term agreement for 3 years - Whether reasonable notice of termination required - Meaning of "some other person" - Companies Act 1965, ss. 158, 159(1)(b) - Interpretation Acts 1948 and 1967, s. 4(3).*

By a letter dated 11 September 1987, the defendant agreed to appoint the plaintiff to establish and maintain the share register for and on behalf of the defendant in consideration of certain terms and conditions. It was a term of the agreement that it would run for a period of 3 years with effect from 18 September 1987 and it stated further that upon completion of the above term, the agreement would be automatically renewed on a yearly basis unless 3 months written notice was given by either party before the expiry date. The defendant by letter dated 1 September 1989 informed the plaintiff that their services as the defendant's share registrars would be terminated with effect from 1 October 1989.

The plaintiff claims that the termination was wrongful as it was in breach of the agreement. The defendant on the other hand contended that:

(1) the agreement was not to run for a fixed period of 3 years as the 3 year period was only indicative of the period for which the fees for the plaintiff's services would be applicable;

(2) the defendant's one month's notice of termination was sufficient as it was the intention of the parties that the contract could be terminated with reasonable notice by either party;

(3) the defendant was not under a legal obligation to use the plaintiff as its sole and exclusive share registrars and was therefore entitled to call upon the plaintiff's services only as and when needed therefore.

Held:

[1] The appointment of the plaintiff through the letter dated 11 September 1987 must have been made pursuant to s. 159(1)(b) of the Companies Act 1965. The defendant's letter dated 18 September 1987 with the heading "Appointment of Segaservices Sdn. Bhd. as REIMB's Share Registrars" clearly showed that it had appointed the plaintiff as its share registrar.

[2] The words "some other person" in s. 159(1)(b) should be read in the singular as the company can only keep one register of its members at any one time. The appointment under the section is therefore exclusive. If the appointment is made for a fixed term then during the term, all services in relation to the register which have been agreed to in the arrangement must be performed by that other person only.

[3] The letter dated 11 September 1987 appointed the plaintiff as its share registrar for a fixed period of 3 years. The appointment was made under s. 159(1)(b) of the Act. It was a contract for a fixed term. The giving of a reasonable notice to terminate does not therefore arise.

[Appeal allowed with costs]

Legislation referred to:
Companies Act 1965, ss. 158, 159(1) (a), (b)
Interpretation Acts 1948 and 1967, s. 4(3)
Rules of the High Court 1980, O. 14

For the plaintiff - Shahul Hameed Amiruddin; M/s. Sri Ram & Co.
For the defendant - Eric Chia and Navaratnam; M/s. Shearn Delamore & Co.

[**Editor's Note:** Defendant has appealed to the Supreme Court on 19 April 1990 *vide* S.C.C.A. No. 02-154-91.]

JUDGMENT

Wan Adnan J:

This is an appeal against the decision of the learned Senior Assistant Registrar made under O. 14 of the Rules of the High Court 1980.

By a contract contained in and evidenced by a letter dated 11 September 1987 by the plaintiff and addressed to the defendant, the defendant agreed to appoint the plaintiff to establish and maintain the share register for and on behalf of the defendant in consideration of and upon terms and conditions contained therein.

The first paragraph of the letter states:

> We refer to the share registrars services offered by our company and set out below the scope of our services and fees as well as the terms and conditions therefore for your ratification to regularise matters.

The letter then in paras. (a) to (g) sets out the various fees payable to the plaintiff for the various services to be rendered to the defendant. Then in paras. (h) and (i) the letter states:

> (h) **Term of Agreement**
>
> This agreement will run for a period of three years with effect from 18 September 1987.
>
> (i) **Renewal of Agreement**
>
> Upon the completion of the above term, this agreement will be automatically renewed on a yearly basis unless three (3) months written notice before the expiry date is given by either party.

The letter was confirmed and accepted by the defendant by the affixing of the defendant's seal in the presence of a director and secretary.

By a letter dated 18 September 1987 the defendant forwarded to the plaintiff "the documents/assets related to our share registration function". The heading of the defendant's letter was "Appointment of Segaservices Sdn. Bhd. as REIMB's Share Registrars".

By a letter dated 1 September 1989 the defendant wrote to the plaintiff:

> We wish to inform you that the directors of Roxy had decided to change the company's share registrars from Segaservices Sdn. Bhd. to M & C Services Sdn. Bhd. As the directors intend that the new appointment be effective from 1 October 1989, the company would like to give you notice that your services as the company's share registrars will be terminated with effect from 1 October 1989.

The plaintiff claims that the termination was in breach of the agreement and therefore wrongful. The defendant denies that the agreement was to run for a fixed period of three years as it was only the intention of the parties that the period of three years in the said letter was merely to indicate the period for which the fees stated in the letter would be applicable. It was also the intention of the parties that the contract could be terminated with reasonable notice by either party. The defendant's one month notice was sufficient. The defendant also contends that it was not under a legal obligation to use the plaintiff as its sole and exclusive share registrars and was therefore entitled to call upon the plaintiff's services only as and when needed.

Under s. 158 of the Companies Act 1965 (the Act) every company must keep a register of its members and enter therein the particulars as required in the section.

Section 159(1) of the Act provides as follows:

> The register of members and index (if any) shall be kept at the registered office of the company, but:
>
> (a) if the work of making them up is done at another office of the company within Malaysia they may be kept at that other office; or
>
> (b) if the company arranges with some other person to make up the register and index (if any) on its behalf, they may be kept at the office of that other person at which the work is done, if that office is within Malaysia.

This section requires that the register be kept at the registered office of the company but the proviso to the section enables the company to keep the register elsewhere under (a) and (b). Under (b), the company is allowed to make arrangement with some other person to make up the register on its behalf. In this event the register may be kept at that person's office. The appointment of the plaintiff through the letter dated 11 September 1987 must have been made pursuant to s. 159(1)(b) of the Act. The defendant's letter dated 18 September 1987 with the heading as stated above clearly shows that it had appointed the plaintiff as its share registrar.

It is very clear that a company can only have one register of its members at any one time. The company can keep the register at its registered office or at another office of the company where the work of making up the register is done, or at the office of some other person with whom the company has made arrangements to make up the register on its behalf. Can the company make arrangement with more than one person to make up the register under s. 159(1)(b)? In my view the company can make such arrangement only with one person at any one time. The arrangement is "with some other person to make up the register and index (if any) and on its behalf." It is just not practicable for the company to have more than one person at any one time to make up the company's register of its members even if the register is kept at its registered office. In my opinion, although under s. 4(3) of the Interpretation Acts 1948 and 1967, "words and expressions in the singular include the plural, and words and expressions in the plural include the singular", the words "some other person, in

s. 159(1)(b) should be read in the singular. The appointment under s. 159(1)(b) is therefore exclusive. If the appointment is made for a fixed term, then during that term, all services in relation to the register which have been agreed to in the arrangement must be performed by that other person only.

The letter dated 11 September 1987 clearly states that the agreement was to run for a period of three years. Two things were agreed to in the said letter. One was the appointment of the plaintiff as the share registrars and the other was the various fees chargeable for the services. The three-year period cannot be interpreted to refer only to the fees chargeable. It must also refer to the period of the appointment of the plaintiff as the share registrar.

In my view by the letter dated 11 September 1987, the defendant had appointed the plaintiff as its share registrar for a fixed period of three years. The appointment was made under s. 159(1)(b) of the Act. It was a contract for a fixed term. The giving of a reasonable notice to terminate does not therefore arise.

I find there are no triable issues. The plaintiff is entitled to the interlocutory judgment for damages and interest. I so order. This appeal is allowed with costs.

Also found at [1991] 3 CLJ 2214